

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

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In the matter of:	:	Consent Agreement and Final Order
	:	
C&D Coal Company, LLC 145 Ivy Lane Tazwell, Virginia 24651	:	U.S. EPA Docket No.: CWA-03-2015-0051
	:	
Respondent	:	Proceeding under Section 309(g)(2)(B) of the Clean Water Act, as amended, 33 U.S.C. § 1319(g)(2)(B)

**CONSENT AGREEMENT**

**I. STATUTORY AND REGULATORY AUTHORITY**

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the Director of the Water Protection Division, United States Environmental Protection Agency (“EPA”), Region III (“Complainant”) and C&D Coal Company, LLC (“C&D” or “Respondent”), pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22. The authority to settle this matter has been delegated to the Regional Administrator for EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director of EPA, Region III. The parties have agreed to settlement of violations of the Clean Water Act by Respondent. This CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) & (3).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act, in an amount not to exceed \$16,000 per day for each day of violation, up to a total penalty amount of \$177,500.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (other than dredged or fill material) from a point source into waters of the United States, except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.

4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the NPDES permit.
5. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Pennsylvania Department of Environmental Protection (“PADEP”) to issue NPDES permits within the Commonwealth of Pennsylvania.
6. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
7. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.
8. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines “point source” as “...any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well [or] discrete fissure...”
9. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, sewage, sludge, biological material and industrial, municipal and agricultural waste.
10. Respondent, at all times relevant to this CAFO, has owned and/or operated the Kingston-West Mine, in Derry Township, Westmoreland County, PA (the “Facility”).
11. PADEP issued NPDES Permit No. PA235873 to Respondent for the Facility (the “Permit”), which was issued on March 16, 2012 and expires on March 16, 2017.
12. The Permit authorizes discharges from the Facility to an unnamed tributary, which flows into Loyalhanna Creek. Loyalhanna Creek and the unnamed tributary are “waters of the United States” and “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
13. Part A, Section 1 of the Permit prescribes effluent limitations for discharges from the Facility.

### III. VIOLATIONS

14. A summary table of effluent limit exceedences, as reported on discharge monitoring reports (“DMRs”) by Respondent, is attached as Attachment A.
15. Respondent’s failures to comply with effluent limitations prescribed by the Permit constitute a violation of Section 301 of the CWA, 33 U.S.C § 1311.

### IV. AGREEMENT AND ORDER

16. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above, and waives any defenses it might have as to jurisdiction and

venue.

17. Each party to this action shall bear its own costs and attorney fees.
18. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
19. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
20. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1) of the Act, EPA has consulted with the Pennsylvania Department of Environmental Protection regarding this action, and will mail a copy of this document to the appropriate state official.
21. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of **thirty thousand dollars (\$30,000)** in full and final settlement of EPA's claims for civil penalties for the violations alleged herein. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
22. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CAFO in the following manner:
  - A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, e.g., CWA-03-2015-0051;
  - B. All checks shall be made payable to "United States Treasury;"
  - C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197 9000

Contact: Heather Russell (513) 487-2044

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL MO C2 GL  
St. Louis, MO 63101

Contact: (314) 418-1028

- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268 0001

- F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact: John Schmid (202) 874-7026; or REX: (866) 234-5681

H. On Line Payment Option:

<https://www.pay.gov/paygov/>

Enter sfo 1.1 in the search field. Open and complete the form.

I. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

J. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to all of the following:

U.S. Environmental Protection Agency  
Regional Hearing Clerk (3RC00)  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029;

Chad Harsh  
Water Protection Division  
NPDES Enforcement Branch  
U.S. Environmental Protection Agency  
Region III (Mail Code 3WP42)  
1650 Arch Street  
Philadelphia, PA 19103-2029;

23. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. § 1251, et seq., or any regulations promulgated thereunder.

24. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or

administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

25. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 1251 et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
26. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.
27. The penalty specified above, represents civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
28. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if EPA obtains evidence that the information and/or representations of the Respondent is false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.
29. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

30. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

**VIII. PUBLIC NOTICE AND EFFECTIVE DATE**

31. This CAFO will be issued after a forty (40) day notice period, execution by an authorized representative of EPA, and filing with the Regional Hearing Clerk. It will become final and effective 30 days after issuance. Payment of the civil penalty assessed in this CAFO is due thirty (30) days after the effective date.

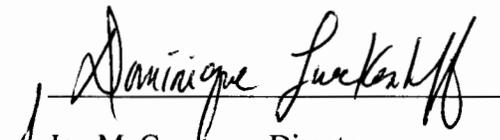
FOR RESPONDENT:



Jim Cooper, Owner  
C&D Coal Company, LLC

Date: 3-3-15

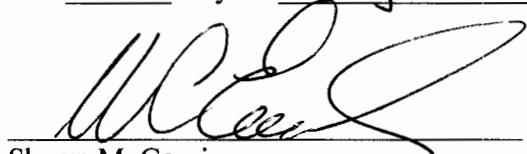
FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

  
Jon M. Capacasa, Director  
Water Protection Division  
U.S. EPA, Region III

Date: 6/15/15

SO ORDERED, pursuant to 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22,

this 20<sup>th</sup> day of August, 2015

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Shawn M. Garvin  
Regional Administrator  
U.S.EPA Region III

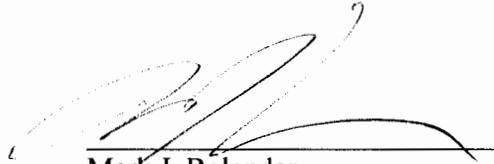
**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Consent Agreement and Final Order, EPA Docket No. CWA-03-2015-0051 and that copies of this document were sent to the following individual in the manner described below:

By UPS overnight delivery:

C&D Coal Company, LLC  
145 Ivy Lane  
Tazwell, Virginia 24651

Date: 8/20/15



Mark J. Bolender  
Senior Assistant Regional Counsel  
US EPA Region III